

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

05/21/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000830

FILED: \_\_\_\_\_

STATE OF ARIZONA

LISA B BARNES

v.

BRADFORD PALMER NYSTROM

JOSEPH W CHARLES

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 5957619

Charge: 1. D.U.I. ALCOHOL  
2. D.U.I. W A/C ABAOVE .10  
3. EXTREME DUI  
4. SPEED NOT TO IMPEDE TRAFFIC

DOB: 11/04/64

DOC: 08/31/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since its assignment on April 22, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the record of the proceedings from the Phoenix City Court, and the memoranda submitted by counsel.

Appellant, Bradford Palmer Nystrom, was arrested and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(1); and Driving With a Blood Alcohol Concentration Greater Than .10 Within 2 Hours of Driving, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); Extreme DUI, a class 1 misdemeanor offense in violation of A.R.S. Section 28-1382; Impeding Traffic, a Civil traffic violation in violation of A.R.S. Section 28-704(A). Appellant entered pleas of not guilty. Appellant filed a Motion to Suppress which was heard by the Honorable George Logan on October 4, 2001. At the conclusion of the evidentiary hearing, Judge Logan found that Appellant had not met his burden in showing that a DUI roadblock had been established or the police engaged in selective enforcement. Judge Logan denied Appellant's Motion to Suppress/Dismiss. Thereafter, the parties appeared in open court and waived their rights to a jury trial and submitted the case to the Court on the basis of departmental police reports. Sentencing occurred November 8, 2001. Appellant has filed timely Notices of Appeal in this case.

The only issue on appeal is whether the trial court erred in denying Appellant's Motion to Suppress based upon an alleged denial of Appellant's Fourth Amendment rights pursuant to the United States Constitution, and Appellant's rights under the Arizona Constitution Article II, Section 8. Appellant contends that the Phoenix Police utilized a DUI roadblock or its equivalent, and that his stop and arrest was unreasonable, and all incidents flowing from Appellant's arrest should be suppressed. The sufficiency of the legal basis to warrant police utilization of a DUI roadblock is a mixed question of law

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and fact.<sup>1</sup> An appellate court must give deference to a trial court's factual findings in the context of a hearing on a Motion to Suppress, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the witnesses.<sup>2</sup> This Court must review those factual findings using an abuse of discretion standard.<sup>3</sup> Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.<sup>4</sup> If, in fact, a roadblock or its equivalent was used, then this Court must review *de novo* the legal question whether the proffered reasons for a roadblock furnish a justifiable basis for their use in this case.<sup>5</sup>

The trial judge specifically found from the evidence presented to him that Appellant had failed to carry his burden of proof in showing that a roadblock was set up by the Phoenix Police Department or that the Phoenix Police Department engaged in selective prosecution.<sup>6</sup> The only evidence of a roadblock is Appellant's trial attorney's argument based upon his questions to civilian witnesses, Shirley Jensen and Gregory Ashman, about being stopped by the police when they left a bar called Gavette's on Camelback Road. Curiously, Appellant's trial attorney did not ask questions of Phoenix Police Officer Timothy Rogers about the police use of a DUI roadblock or selective enforcement by the police. Most importantly, Officer Rogers testified about the specific reasons that he stopped Appellant's vehicle. The officer testified about the extremely erratic driving which he observed immediately prior to stopping Appellant's vehicle.<sup>7</sup>

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<sup>1</sup> See State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (1986); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998).

<sup>2</sup> Id.

<sup>3</sup> State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

<sup>4</sup> State v. Chapple, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983); State v. Magner, 191 Ariz. at 397, 956 P.2d at 524.

<sup>5</sup> See State v. Tykwinski, 170 Ariz. 365, 824 P.2d 761 (App. 1991).

<sup>6</sup> R.T. of October 4, 2001, at pages 55-56.

<sup>7</sup> Id. at pages 6-7.

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Appellant's arguments that the Phoenix Police engaged in a defacto roadblock is not supported by the record. Unfortunately for Appellant, his witnesses were not able to provide facts from which the trial judge could conclude that police had stopped any vehicle without a reasonable basis to stop that individual vehicle. This Court can find no error in the trial judge's factual conclusion that Appellant's vehicle was stopped because the police had a reasonable suspicion to stop it. This Court concurs with the trial judge's conclusion that Appellant's contentions were without merit and the Motion to Suppress/Dismiss should be denied.

IT IS THEREFORE ORDERED affirming the judgments of guilt and responsibility and the sentences and sanction imposed.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.